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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.199 of 1989.

Date of decision: March 20, 1990.

Nilakantha Mishra ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. J. Das,
B. S. Tripathy,
B. K. Sahoo, S. Mallick,
K. P. Mishra, P. K. Deo, Advocates.

For the respondents ...

Mr. Ashok Mohanty.
Standing Counsel (Railways)

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C O R A M:

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? No
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

N. SENGUPTA, MEMBER (J) The facts leading to this case, put in brief, are as below.

2. The applicant was first appointed as a Brakesman

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and in due course was promoted to the rank of Passenger train Guard Grade 'A' in January, 1971. On 25.12.1985 he was served with a notice that he was being prematurely retired after having completed 30 years of service qualifying for pension. Against this notice of premature retirement he made a representation to the Divisional Railway Manager, South Eastern Railway, Khurda Road on 6.1.1986. After that the Chief Controller, passed an order reinstating him in service with effect from 18.7.1986. But some time was spent in communicating the order to him and he resumed duties on 23.7.1986. No indication as to how the period from the date of premature retirement till he resumed duties in pursuance of the order of the Chief Controller, South Eastern Railway, Khurda Road dated 18.7.1986 was given. Thereafter he made a representation or appeal to pass necessary orders for treating the intervening period as duty. This representation which was dated 1.8.1987 was replied to by the Divisional Personnel Officer, S.E. Railway, Khurda Road by stating that the decision taken earlier to treat the intervening period as leave due stood. It is alleged by the applicant that infact no order directing to treat the intervening period as leave due was earlier communicated to him. But at the hearing it has been admitted that such an order was passed by the authorities concerned. Basing on these main allegations the applicant has prayed for treating the period from 25.3.1986 to 22.7.1986 as spent on duty as Guard Grade 'A'.

*Not Encl
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3. We have heard Mr.K.P.Misra, learned counsel for the applicant and Mr.Ashok Mohanty, learned Standing Counsel for the Railway Administration. As has been indicated above, at present there is no dispute about the applicant having been promoted to the rank of Guard Group 'A' nor about he being served with a notice of premature retirement against which he made a representation and the said representation was allowed. There is also no controversy about the applicant resuming the duties on 23.7.1986 after he was communicated with the order of the Chief Controller dated 18.7.1986. The real point for consideration is when the applicant did not really work during the period from 26.3.1986 to 22.7.1986 could he get the emoluments as if he were on duty. Undoubtedly, it was the Railway Administration which wanted to compulsorily retire the applicant and by the order of reinstatement, that order of compulsory retirement was set aside. The applicant was kept out of work for no fault of his. The general principles for restitution are also applicable to service matters. Had not the order of premature retirement been passed by the Railway Administration, the applicant could not have been out of office and when the Railway Administration decided to set aside its own order directing the applicant to prematurely retire, the only result that can follow is that the applicant must be deemed to have been continuing

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in service during the period from the date of premature retirement till he resumed his duties. He would be entitled to the emoluments for these periods at the same rate as if he were on duty and the order of the Railway Administration treating the period as spent on the leave due cannot be sustained.

4. This application is disposed of accordingly but however it would not be proper to award costs to the applicant.

[Signature]
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Vice-Chairman



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Member (Judicial)